



## **CHARTER REVISION JULY 8, 2014**

The Charter Revision Commission met on July 8, 2014 at 7 p.m. at the Board of Education Building Conference Room A.

Present: Commissioners Larson, Hutton, Pessina, Petras, Milardo, Blanchard, Thornton, Loffredo, and Ryan.

Absent: Commissioners Adams and Gaudino

Also Present: General Counsel Brig Smith and two members of the public.

Chair Larson opens the meeting at 7:01 p.m. He asks for a motion to approve the minutes of June 24. Commissioner Ryan so moves and is seconded by Comm. Petras. The Chair calls the vote. Commissioners Pessina, Loffredo, and Hutton abstain; Comm. Milardo states he is not voting. The rest vote aye. The Chair states the minutes are approved.

The Chair opens public comment.

Councilman Sebastian Giuliano states he has seen the draft report and a general observation is a lot better handled by ordinance than putting it in the Charter and putting it in stone and not changing it again without going through this process. For example, the compensation for the Council; it doesn't need to be protected from itself, but the Mayor could be. Changing references from City Attorney to General Counsel and it was created by an ordinance that is a system set up by the charter and it can be changed. I view General Counsel as the office and City Attorney as the head of the department. It could change. The designation Mayor's Administrative Assistant to a Chief of Staff, his observation is there is no staff he covers. The Duties are not defined. It is what the mayor wants that person to be. I did not use that person as chief of staff and giving it a title like that might not fit what the chief executive wants. There has been discussion about the Board of Education can be a separate taxing district; I don't think you need to do that, but because the Mayor does not administer that budget, it seems you are adding a step; why can't once the BOE adopts a budget, it go to the Council for approval. It still approves the funding and the City of Middletown can send out a tax bill and they write out a separate tax bill that writes out a separate mill rate for each department. Finally, he is concerned about raising the bonding to \$1 million without some kind of string. What we found going to \$750,000, we found there was not a lot you could do for \$500,000 and the unintended consequence is bigger projects are being broken down instead of going to the public and now you are allowing the Council to chop up projects to \$1 million. Either require a nine vote super majority or cap it once you get to \$3 on non-referendum bonds and anything over that goes to referendum. The last round \$17 million of bonds were approved by voters and the \$13 million was done by chunks and he doesn't think the citizens wanted that to happen. I strongly suggest you stop the practice of what has been going on the last three or four years, breaking them into components to avoid a referendum.

The Chair closes public comment.

Comm. Pessina moves to amend the agenda so that we move comments from General Counsel forward. Comm. Ryan seconds. The vote is unanimous to have him next.

Attorney Smith states you have electronic copies and he also has hard copies; he will walk through the memo. Chair Larson states he has read through it and we don't have to go through the legislative stuff. Attorney Smith states he was tracking 6 outstanding questions and you have my answers. Two are close calls. His response for term limits is probably no. He explains that you are talking about elections and he uses the case line of elections to render an opinion because more likely than not, it is not permissible. Eminent Domain is the second close call. He asks they look at page 8, you will see a proposal it has to be for schools, public roads, municipal buildings and council has to look at it first and then they have to go to the people. This is further afield than term limits; it was closer to black than white because we were dealing with elections. Only two folks have done term limits, but a handful have tried to do eminent domain. Page 7, he reads the cities that have passed ordinances or charter languages to limit eminent domain with something to the extent of the law. He states and it is not allowed by

much. He goes through the Kelo case and what you did was just fine. CT has Public Act 141 and it changed eminent domain statutes to limit the power of what municipalities can do. You can no longer use eminent domain for public private projects and it is Chapter 8-35 and also under redevelopment to undertake eminent domain. They raised it substantively and it is a solution looking for a problem. We inherited an eminent domain case and the city was looking to take the property for parking and the court says I am not going to tell you public parking is still good for public purposes but the procedure was not kosher based on Chapter 8-35 and chapter 130 for redevelopment and what we didn't do right was we didn't get two appraisals. My take is the statutes as they exist give you the uses of eminent domain that are allowed and if you look at page 7, this is the home rule city act. He reads it. One of the powers is we think public parking. The home rule city act goes on and on. CT is home rule but we don't mean it. The grant of home rule power is less robust than a lot of states and is close to Dillon's rule. What the state giveth the state taketh away. We take home rule less vigorously and what he suggests because we are in the state we are in and view the powers that they giveth and we have a list of things we can do; if you are going to do it, water it down and tie it back to the statutes. He reads his suggested language. It keeps the council as part of the process and it is a suggestion as an approach. If you are looking for a more detailed list, you will have to broaden the list. He uses the riverfront development as an example; Comm. Loffredo states the general assembly could modify the statute. Atty. Smith responds if we want to lower the ceiling, we can't do as much because of the statute. He discusses the Riverfront; most of that is public land. There is a parcel that is privately owned and the owner is interested in making a fair return on investment. If this provision were enacted, he would find it difficult to use eminent domain for this parcel and it would be a tool that we won't have. You as policy makers will make that decision. The broader one lowers the ceiling. Chair Larson asks do we have anything in the charter on eminent domain. Atty. Smith replies no. Chair Larson if we wanted to put it in you suggest the language and that is what you are advising us to do. If the Council looks at all the things we are proposing, they may come to you and ask for your advice and you will give them the same advice. Atty. Smith states he will say the same thing the second time around. Comm. Milardo states the language does nothing and we are required to abide by the Statute. It is moot and superfluous. We either do something or don't. He comes from a philosophy that all power is invested in the people and consequently if the State, by constitution, gives authority to the town and states you can make the rules to function and in his opinion we can vary eminent domain so long as we don't cross the statute. There can be no sour grapes in the public's mouth and the property owner is forbidden from challenging for pure public use and if you are in question about the public use, then you have to determine if the people are upset, and if so, they have recourse.

Comm. Milardo states he believes they can do term limits unless there is a court case. Comm. Loffredo would support that the power is with the people and they would vote you out of office. That is the power. Comm. Milardo states they did it with the president and it has been limited. Comm. Loffredo responds it is a constitutional amendment.

Chair Larson asks if there is further comment on those items; seeing none, the Commission moves on to the discussion of other matters with General Counsel.

Atty. Smith states staggering terms; they can be staggered and many towns have done it. The question of staggering and the statute allows it and we are doing; he states the statute says an ordinance is allowed. Comm. Thornton states she has not looked at the Charter and the voting; do they have to have a supermajority vote for Planning and Zoning. She asks if the five votes is that what the statute says. Atty. Smith states the statute is four out of seven. Comm. Thornton states we have a list of things for Charter Revision and the ability to look at the language to make it more constitutional and in line with State law and we can put it on our list – removing the five votes. Comm. Milardo states he believes it is state law and if we are running afoul then we cannot allow it to be in the charter. If it doesn't run afoul, then it should remain because it allows 5 affirmative votes and that requires a heavy burden for those trying to overdevelop the town. Chair Larson states State law requires a simple majority. Atty. Smith will look at the statute.

Atty. Smith states a separate taxing district for the Board of Education is no for the reasons we talked about. They ran it by the Association of Municipal Attorneys and trying to set up a separate taxing district is not allowed. Comm. Milardo asks whether the district budget has to be approved with the city budget. Atty. Smith states there is support for that proposition. He will review that. If that is the case, if the person takes a petition of the budget, what is he taking the petition on. Atty. Smith responds it is probably yes under Naugatuck.

Atty. Smith states on mayor paying social security; yes we can allow the mayor to pay something separate from the pension fund and there are a lot of ways to do this and if you want to you can do it. Chair Larson we are talking about a TSA and is it considered a pension he would not be allowed social security. Comm. Milardo states

CT is one of a small handful of States which does not allow a person to pay into social security if you provide a municipal pension. The other 35 allow piggy backing. If you receive a pension based on a municipal pension, then you cannot collect your social security that was earned before or after. Atty. Smith states they used Robinson and Cole, our outside consultants on pension questions, and he will look at that.

He is providing draft language for the changes asked for on June 24.

Chair Larson states if everyone is in agreement they will look at their list of outstanding questions and go through it.

First is limiting the terms for Mayor. It would be 2 four-year terms. He states Atty. Smith gave us his best shot and he is saying we probably should not do this. Is there a motion for term limits.

Comm. Milardo moves to set term limits for the mayor to 2 four- year terms and the Council to 3 two- year terms.

Chair Larson states we will take it one at a time. Chair Milardo states the motion is to limit to Mayor to 2 four-year terms in his lifetime. Comm. Petras seconds motion. Chair Larson asks if there is any discussion.

Comm. Milardo states the Mayor is a position of authority and should be limited to a term of eight years. Comm. Pessina states you can have a dynamic mayor working on behalf of the city and we are going to say to the public you love this person and he is financially responsible but we say you cannot have that person be a mayor again and I think it is unfair and I don't think it is constitutionally appropriate. If the mayor is not doing an appropriate job, he or she won't be elected. Comm. Petras states does the same hold true for the president; he has term limits. Comm. Blanchard states let's not discount the voters. We have had 3 mayors in the last 15 years and we have seen mayors voted out. I agree with what Comm. Pessina is saying and voters are capable of removing people from office for not doing a good job. Comm. Ryan is for the public deciding who will be the Mayor. It puts the onus on the voters. Comm. Milardo responds that every argument used against this is exactly why we should propose this and let the voters decide. The voters get to choose how the charter will be amended, not the council and not this body. So the question I am posing is the proposition the voters should decide. We are saying it is open for discussion, review and vote and if we close it off, it is off until the next charter revision.

Chair Larson asks if the referendum vote will be a vote item by item or one question. Comm. Milardo states we can advise the council and suggest the questions be set up by administrative, economic and other areas and have them vote on each section. It is up to the Council. As I read the resolution, it is look at the whole charter and whether we reject it or not, it means we are suggesting it. Comm. Loffredo states one concern he has is it appropriate to have recall; Atty. Smith you cannot do recall. Comm. Loffredo discusses the running of two years ensures accountability. The system is not broken.

Term Limit vote: The Chair states the motion limits the mayor to two terms for four years. He asks those in favor to say aye. Commissioners Milardo and Petras vote aye. He asks for those in opposition. Commissioners Pessina, Hutton, Ryan, Loffredo, Thornton, and Blanchard vote nay.

Comm. Milardo states if the Council is going to four year terms, limit the council to two terms in a life time. His motion is that the Council terms be limited to three, 2-year terms in a lifetime. Comm. Petras seconds the motion.

There is no discussion. The vote is called and it is two aye votes by Commissioners Milardo and Petras and six nay votes by Commissioners Pessina, Hutton, Ryan, Loffredo, Thornton, and Blanchard. The motion does not carry.

The Chair recognizes Comm. Loffredo regarding the Fire District Proposal. Comm. Loffredo moves to propose the central Fire District be set up like Westfield or South Fire. Atty. Smith states it is interesting. The Westfield and South Fire Districts are established by special act of the State. It turns out that home rule can supersede a special act. On the second page, he is suggesting that you tuck it in under Council that the fire district will supersede the special acts of fire district. It is a starting point.

Comm. Loffredo states he will not favor that because it will start a revolution. He is looking at the issue of taxation without representation. He asks they look at the last page. He highlighted that each fire district sets the mill rate and in Middletown we have three districts and the central district is controlled by the Mayor and Common

Council and the representation by taxpayers is not on this board. The majority of the Council are not members of the district. If you look at the act that set them up, it shows the commissioners and he would like the charter to allow the city district to work like the other districts. You could have a special election as they do in the districts and the electors would set the mill rate. Chair Larson what you are looking for is and my understanding of what you said is the way South Fire works, they elect the commissioners and they establish the budget and they have their own tax collector. Comm. Loffredo we can use the city tax collector. Comm. Milardo states they have it separated electronically. Comm. Loffredo states he received his bill for taxes and it raises questions. Comm. Milardo states why can't the city put one of the old machines in city hall lobby and have a vote on their own budget and you don't have to worry about someone outside the district voting for it. Comm. Loffredo states we have a sanitation district and that is what he was looking for. As of such a date, that the city fire district shall be governed in the same terms and conditions of South Fire.

Atty. Smith offers suggested language. The City of Middletown Fire District following passage of this charter provision shall be 5 commissioners and shall be elected by the members of that fire district. He would take the language from South Fire.

Chair Larson states your motion is that the City Fire District parallel the other two fire districts in governance and election of commissioners.

Councilwoman Kleckowski asks how the election will occur; do they match voting districts. The response is probably not. Councilman Giuliano states then you can't do it during the municipal election. Comm. Ryan states it requires the expense of another election. Comm. Loffredo points out that the City Fire District carries a burden that no other district carries. Special elections for Fire Commissioners can occur with one elected each year or 2 elected at one election and 3 at the next.

Comm. Loffredo moves that a section be added to the Charter regarding the governance of the City Fire District similar to that of South Fire; Comm. Hutton seconds the motion. The vote is unanimous to approve. Atty. Smith will use language from South Fire and Westfield and it is for five commissioners for a 5-year term.

Chair Larson states the next item is staggered terms for the Council. Comm. Blanchard voted no. Comm. Loffredo states what the terms are. Chair Larson it is four year terms. Comm. Loffredo asks what the ballot will look like. Comm. Milardo states if you go to four years, there will be a two year gap with no municipal election. He states we would have to amend the Mayor's section on vacancies. Chair Larson responds we did that.

Chair Larson states the motion to put all elected offices on a four year nonstaggered schedule for election. Comm. Thornton moves this for approval and is seconded by Comm. Blanchard. Comm. Hutton states no term limits.

The Chair asks if there is further discussion. Hearing none, he calls for the vote. It is seven aye votes by Commissioners Petras, Pessina, Hutton, Ryan, Loffredo, Thornton, and Blanchard and one nay vote by Commissioner Milardo.

Comm. Milardo is recognized for a discussion of eminent domain. He states as a move to fill a gap where we could have anyone in the city affected by a decision of the Council unfettered by any control or restriction and we can take the land and if you want to fight, you will lose your land. He states as soon as they file their citation of eminent domain, you have lost your land if they put in what they will pay, for your land, it is gone from the time of filing. Comm. Petras seconds the motion.

Atty. Smith is recognized and states on the Planning and Zoning Commission, it has to be staggered. You could separate it out or you could make it a small commission of five, then you avoid the staggered term. If it was a separate planning commission it would have to be staggered because we are too big. Chair Larson there is no discussion of lowering the number, if we have to have staggered terms, can they be municipal and then tag along with the State. Comm. Thornton states they are even years. Atty. Smith states no more than 3 of six or 4 of seven shall expire in any one year. You could conceivably set up 8 year terms and four year terms. Then it is staggered without being staggered. Larson makes the suggestion leave the concept in Atty. Smith's hand. We want to cut down on the number of elections if it can be municipal and then on state election, otherwise we have to leave it alone. Comm. Blanchard states it gets messy; some have a planning commission and a zoning commission. Comm. Milardo states it was merged, probably in the 60's. Chair Larson states his sense Planning

and Zoning has to stay staggered. Comm. Blanchard states it gets messy to appease a four year council term. Comm. Larson states the Board of Education is on staggered terms. Do we want to make the Board of Education four years with everybody elected at the same time or keep it staggered. Comm. Milardo states as a matter of the report and put a note on that section the discussion was had and leave it to the Council as to what happens. Chair Larson responds that is a good suggestion. Comm. Milardo states a great deal of discussion that all offices of the city should be four years and skip the middle election or maintain the two year elections. Comm. Thornton states the only way to stagger the Planning and Zoning Commission would be with 8 or 4 year terms. Comm. Milardo states one of the things that strikes him for converting everything to four years, if you lose the public interest in serving, a lot of people forget about vacancies on boards and he is not sure it is a good idea. Chair Larson we will leave staggered terms for the Board of Education and Planning and Zoning. Comm. Blanchard agrees with Comm. Milardo and if we let the voting get messy between cycles, you get rusty and have less participation and it can pose a serious problem. We are trying to do too much to appease a four year council term. He suggests that the Board of Assessment Appeals, Planning and Zoning, Board of Education, and Council have staggered terms if they are four-year terms.

Chair Larson states let's throw this to the Council and use Comm. Milardo's suggestion to get suggestions from the Council

The Chair moves to the discussion of Eminent Domain. Comm. Milardo moves for the language he proposed originally; Comm. Petras seconds the motion.

Chair Larson states Atty. Smith you are asking us to not change the language. Atty. Smith it is a gray area and he would like the lesser language, the one he proposed. The Chair asks for further discussion. Hearing none, he calls for the vote. It is two aye votes by Commissioners Milardo and Petras and six nay votes by Commissioners Pessina, Hutton, Ryan, Loffredo, Thornton, and Blanchard. The matter does not carry; the motion fails.

The Chair moves to the language changes of the Charter provided by the Office of General Counsel. Atty. Smith states he defined CPI so no one is confused.

The Chair asks for a motion. Comm. Pessina moves for approval the language on the Mayor's compensation and the Council's stipend; Comm. Hutton seconds. Comm. Petras asks if they want to put the Council's stipend in the Charter. Chair Larson states the conversation is set and it is to take it out of the political arena and there is an automatic raise. Comm. Petras states if there is not a charter revision commission, it will stay at this. He can't support doing that.

The Chair asks if there is any further discussion; seeing none, he calls the vote. It is six aye votes by Commissioners Pessina, Hutton, Ryan, Loffredo, Thornton, and Blanchard and two nay votes by Commissioners Milardo and Petras vote nay.

Chair Larson states the next is the language on vacancy in office and powers and duties of the Council. He will accept the motion for the changes. Comm. Loffredo moves them for approval and is seconded by Comm. Ryan.

Comm. Thornton states we had quite a bit of discussion on where the Mayor's salary should be and pegged it at \$100,000 and I am not convinced after looking at the salaries of the people the Mayor oversees that this is an adequate salary for the Mayor. The Mayor should receive \$1 more than what is paid the highest director and the salary goes up and down with those salaries because the mayor has the ultimate responsibility of those directors. Comm. Hutton asks what happens if the highest paid officer leaves the job, does that mean the Mayor's salary goes down because they start lower. Comm. Thornton we have a list of what they make and you are saying if the highest goes down, does the mayor's go down. If it is a \$1 more, it would. Comm. Hutton states he has no problem but he doesn't want someone in office see it go down by a large amount. Comm. Loffredo doesn't agree; directors are hired by their degrees, certifications and experience and they are long term career positions as opposed to elected and he doesn't agree to \$1 more. Comm. Petras states it is an elected position with no other requirements. Comm. Ryan some position like Brig's requires degrees and experience and the highest paid is the finance director and there are some that require engineering degrees and not diminishing the fact the mayor has the ultimate decision, but he doesn't need a degree. Comm. Milardo it shouldn't be a pittance to pay the mayor and what we pay them is the amount set by charter and they know coming in no one will monkey with it for four years. You don't get hired, you throw your hat in the ring. We are not talking democrat or republican, but also independents. The problem arises by trying to set it to the highest director and would agree if they didn't get

perks like the use of a car, and the other little things that go along with the office. We don't give them a credit card for them to spend up to \$10,000. We have to set a mark and putting into that a nonpolitical determination of the raise and if you are giving a portable pension benefit, if some of the directors are only there for two years, they can't take a pension benefit with them. He believes the \$100,000 is reasonable. Comm. Blanchard states we are ensuring them to a four year term. Chair Larson we are adding \$30,000 to the Mayor's compensation.

The Chair asks for motion. Comm. Thornton emphasizes that it is a tough job. It is a rigorous application process. You have the highest authority in the land with people of Middletown to hire you. Chair Larson respects Comm. Thornton's position; Comm. Thornton would like the person adequately compensated.

The Chair states the motion is to approve the language as presented by the Office of General Counsel. It is seven aye votes by Commissioners Milardo, Petras, Pessina, Hutton, Ryan, Loffredo, and Blanchard and one nay vote by Commissioner Thornton.

The Chair recognizes Commissioner Blanchard regarding the issue of running more candidates than can be seated, like Planning and Zoning. Comm. Blanchard states going back to the Statute what he was suggesting is not applicable. You have to put the number of people on the ballot for the number of openings and it is a moot point.

Comm. Thornton asks if it is possible to limit the number of persons to run for office for Planning and Zoning, like it is for the Council so the number to be elected. Comm. Loffredo states the Statute trumps it. Atty. Smith you have to

Comm. Pessina moves to the report and in reviewing number 7, bonding below \$500,000 using nine votes. Staff states there is no change; the report reflects all discussions that occurred by the commission with the vote. The vote was to not pursue this.

Comm. Thornton raises the issue of needing five affirmative votes for Planning and Zoning projects. She would like to change that to follow the State Statute of a simple majority. She moves this for approval.

Chair Larson states we covered what we said we would; is there a motion to revisit and is there anything else to bring up.

Comm. Pessina states he would like to add Planning and Zoning and change the need for a super majority vote and make it a simple majority. Comm. Thornton states it would be amending Chapter 8, Section 3 a quorum shall be 5 commissioners with affirmative vote of no less than 4 commissioners. She states for persons going before Planning and Zoning, they have an unreasonable burden to overcome and it goes beyond what State statute requires and duly hampers the flow of business.

Comm. Thornton moves to amend chapter 8, section 1 paragraph 3 that the quorum shall be 5 instead of 6 and decisions shall be taken by no less than 4 instead of 5 to conform to State statute minority representation rule and allow for more smoother efficient flow of business. Comm. Pessina seconds the motion.

Comm. Milardo states in keeping with two other things, we proposed which were not acceptable, I think the issue that concerns many people at least those I speak with is the overreaching of government into private lives. When we talk about bonding, it is taking money out of their pocket without their vote. The issue involving eminent domain, people's property is peoples property and to have it taken away from other than truly public purpose is not acceptable and Planning and Zoning people could do what they want their property but we shouldn't have those agencies stopping us from using our property the way we want. You need five votes for that. The wisdom, Middletown has not been overdeveloped and subdivisions have been denied because of the five votes. Leave it alone and leave it five votes and it provides for reaching across the aisle. Comm. Loffredo states the city has been prudent in its development and the current system, he would not change it. There needs to be prudence and deliberation and the city has been well served. He agrees with Comm. Milardo and he is not convinced and is opposed to it. It is a good burden.

Comm. Pessina agrees with Comm. Thornton and let us bring it to the vote. Chair Larson asks the other commissions like Inland Wetlands, they have a simple majority and no one else has this. Comm. Thornton states yes, no one. Comm. Ryan asks how long the present one has been in place; staff responds since it went to an elected commission. Comm. Ryan states he agrees with Comm. Milardo; he made good points and he likes the fact that it seemingly has worked well for all these years and he is reluctant to change it and he would vote against the motion.

The Chair calls for the vote and it is two aye votes by Commissioners Thornton and Pessina; and six nay voters by Commissioners Milardo, Petras, Hutton, Ryan, Loffredo, and Blanchard. The matter fails.

Chair Larson states July 15<sup>th</sup> public hearing is at p.m. council chamber. They will reconvene here on July 22 at 7 p.m. for a last review and then it goes to the council.

Comm. Petras moves to adjourn and is seconded. The Chair adjourns the meeting at 8:45 p.m.

ATTEST:

MARIE NORWOOD  
STAFF, CHARTER REVISION